Dixit

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.2435 OF 1998

The Board of Trustees of the Port of Bombay ...Plaintiffs
V/s.
Shyam Steel Corporation & Ors. ...Defendants

Mr.V.J. Makhija with Mr.Parag Khandhar, Advocates, i/b. Mulla & Mulla, for the Plaintiffs.

CORAM : ABHAY S. OKA, J.
DATE : 1ST NOVEMBER, 2007.

ORAL JUDGMENT :-

1. This Suit has been shown on the cause list under the caption "Undefended Suits for Ex-Parte Decree."

2. This Suit is filed by the plaintiffs for recovery of a sum of Rs.1,04,181.24 with further interest on the sum of Rs.91,660.84 @ 18% p.a. from the date of filing of the Suit till the payment or realisation.

3. In or about May, 1993, "s.s. VINNITSA" has discharged one container containing approximately 20,000 kgs. of Heavy Melting Iron Scrap which was manifested at Item No.77 of the Import General Manifest No.955 dated 11th May, 1993 of the said

vessel.

4. The last free day of the cargo of the said vessel fell on 13th May, 1993 and 18th May, 1993 respectively.

5. According to the case of the plaintiffs, the 2nd and 3rd defendants were the agents of the said vessel who discharged the said consignment. Therefore, the case is that the 2nd and 3rd defendants were the bailors of the said consignment. The 1st defendants, according to the plaintiffs, were the importers / owners / consignees of the said consignment.

6. According to the case of the plaintiffs, the defendants failed and neglected to take delivery of the consignment and to clear the consignment within the stipulated period of 7 days from the date of landing. The consignment was, however, not cleared and remained in the premises of the plaintiffs for more than two months. Communications were issued by the plaintiffs to the defendants calling upon them to clear the consignment.

7. By letter dated 16th March, 1994, the first defendants informed the plaintiff that they have surrendered the said consignment to the Customs. In the letter dated 29th March, 1994, the 3rd defendants alleged that the consignee did not show any interest in taking delivery of the said consignment and requested the plaintiffs to auction the same and deduct the ground rent charges therefrom. Thereafter, steps were taken for publication of notice of the sale in the local newspaper as well as in the Maharashtra Government Gazette.

8. According to the case of the plaintiffs, the said consignment was sold for the sum of Rs.1,27,100/-. The Port Trust charges accrued on the said consignment amounted to Rs.1,57,895/-. The Customs duty payable was Rs.48,155.84 and expenses for sale were incurred by the plaintiffs in the sum of Rs.12,710/-. After adjusting the sale price towards the said dues, the liability of the defendants is in the sum of Rs.91,660.84. Though the plaintiffs called upon the defendants to pay the balance amount, the same was not paid.

9. The defendants have not filed written

statements. The plaintiffs have filed affidavit of one Mr.Rajiv Manohar Sakhardande stating therein that certain original documents were misplaced and true copies of the originals have been filed on record. He has stated that the copies annexed to the plaint were compared with the originals at the time of institution of the Suit. Therefore, permission has been sought to lead secondary evidence. The said affidavit is taken on record and marked "X" for identification. The plaintiffs have also filed the affidavit of one Shri.Sanjay S. Sawant for proving their claim. The said affidavit is taken on record and marked "Y" for identification. A compilation of documents has been tendered on record which is marked "Z" (collectively) for identification.

10. Perusal of the averments made in the aforesaid affidavit and perusal of the documents shows that the claim made by the plaintiffs regarding failure of the defendants to clear the consignment has been established. The plaintiffs have established that the consignment was sold and sale proceeds of Rs.1,27,100/- were received.

11. Thus the claim in the Suit has been duly proved. This is a fit case for passing a decree by

invoking Rule 10 Order VIII of the Code of Civil Procedure, 1908.

12. The plaintiffs have claimed further interest @ 18% p.a. from the date of institution of the Suit. Considering the facts and circumstances, the rate of interest deserves to be fixed @ 6% p.a.

13. Hence the Suit is decreed in terms of prayer clause (a) with modification that further interest will be payable @ 6% p.a. on the principal amount from the date of institution of the Suit till realisation.

14. Plaintiffs will be entitled to the refund of Court fees, if any, as per rules. Certified copy is expedited.

[ABHAY S. OKA, J.]